Quality Hardware Manufacturing Co. *and* Metal Trades Council of Southern California and its affiliated Local and International Unions, AFL–CIO. Case 31–CA–18569

July 22, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On September 18, 1991, Administrative Law Judge George Christensen issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order as modified.[3]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Quality Hardware Manufacturing Co., Hawthorne, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraphs 2(c) and (d) and reletter the remaining paragraphs accordingly.

''(c) Make the unit employees whole for any loss of earnings and other benefits suffered as a result of the unfair labor practices engaged in by the Respondent. Backpay shall be computed as prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest computed as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.''

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board found we violated the National Labor Relations Act and order has to post and abide by this notice.

WE WILL NOT fail and refuse, at the request of the Metal Trades Council of Southern California and its affiliated Local and International Unions, AFL–CIO to prepare and sign a collective-bargaining agreement containing the terms of our agreement with the Union which expired on August 28, 1990, as changed, modified, or added to by our contract offer to the Union in August 1990 (modified solely as to the retroactivity of the first wage increase set out in that agreement), and to forward that agreement to the Union for its execution.

WE WILL NOT fail and refuse to abide by the terms of that agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in their exercise of rights guaranteed them by Section 7 of the Act.

WE WILL at the request of the Union reduce to writing, sign, and forward to the Union a collective-bargaining agreement containing the terms set out above.

WE WILL abide by the terms of that agreement.

WE WILL make our employees in the bargaining unit whole for any loss of earnings or other benefits resulting from our unfair labor practices, plus interest.

QUALITY HARDWARE MANUFACTURING CO.

Arthur Yuter, for the General Counsel.
Mark C. Madden, of Pasadena, California, for the Respondent.
Herbert M. Ansell, of Los Angeles, California, for the Charging Party.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] In its exceptions, the Respondent contends that it had proof of ''an actual loss of majority status'' allegedly transmitted by facsimile to the Union on November 6, 1990, consisting of a petition signed by a majority of its employees, both strikers and replacements. The Respondent introduced the petition at the hearing as a defense to the allegation that it unlawfully refused to sign and abide by the collective-bargaining agreement. It failed, however, to authenticate any of the signatures on the petitions. In the unusual circumstances of this case, where the Respondent continued to bargain with the Union after the alleged loss of majority status and introduced no evidence as to the authenticity of the signatures on the petition or establishing that the Union received the alleged November 6 transmission, we find the petition has no probative value.

[3] The judge inadvertently omitted a make-whole provision from his recommended Order. We shall modify the recommended Order accordingly.

DECISION

STATEMENT OF THE CASE

GEORGE CHRISTENSEN, Administrative Law Judge. On April 4, 1991, I conducted a hearing at Los Angeles, California, to try issues raised by a complaint issued on January 22, 1991, based on a charge filed by Metal Trades Council of Southern California and its affiliated Local and International Unions, AFL–CIO (Union) on December 7, 1990.

The complaint alleged and Quality Hardware Manufacturing Co. (Respondent) denied the Respondent violated Section 8(a)(1) and (5) of the National Labor Relations Act (Act) by failing and refusing to recognize as a valid and enforceable contract its contract offer accepted by the Union, reducing that contract to writing, executing it, and abiding by its terms.

The Respondent contends a valid contract between the Union and the Respondent enforceable under the Act was not created by the Union's acceptance of its contract offer because: (1) neither the negotiations prior to the acceptance nor the acceptance was conducted or accomplished by an authorized representative of the Metal Trades Council of Southern California (MTC); (2) the accepted contract offer did not contain an effective date or a termination date; (3) the Union's acceptance of the contract offer was ambiguous; and (4) the Union was not authorized to represent the unit employees at the time it accepted the Respondent's contract offer.

The issues created by the above are whether a valid contract enforceable under the Act between the Union and the Respondent was created on the Union's acceptance of the Respondent's contract offer.

Counsel were afforded full opportunity to adduce evidence, examine and cross-examine witnesses, argue, and file briefs. Counsel for the General Counsel argued orally prior to the close of the hearing; counsel for the Charging Party and for the Respondent filed briefs.

Based on my review of the entire record, observation of the witnesses, perusal of the oral argument and the briefs, plus research, I enter the following

FINDINGS OF FACT[1]

I. JURISDICTION AND LABOR ORGANIZATION

The complaint alleged, the answer admitted, and I find at all pertinent times the Respondent was an employer engaged in commerce in a business affecting commerce and MTC, Local 67, an affiliate of the Metal Polishers and Platers Union, AFL–CIO (MPP) and Local Lodge 102, an affiliate of the International Association of Machinists, AFL–CIO,[2] were labor organizations within the meaning of Section 2 of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

1. The unit

The complaint alleged, the answer admitted, and I find at all pertinent times the following employee unit was appropriate for collective-bargaining purposes within the meaning of the Act:

> Included: All production and maintenance employees employed at the Employer's Hawthorne, California plant, including all shipping and receiving employees. Excluded: All office clerical employees, watchmen, guards, professional employees, and supervisors as defined in the Labor Management Relations Act, as amended.

2. The Union's representative status

The complaint alleged, the answer admitted, and I find on or about June 21, 1955, the Regional Director for Region 21 of the National Labor Relations Board (Board) certified a majority of the Respondent's employees within the unit just described designated and selected the Metal Trades Council of Southern California and its affiliated Local and International Unions, AFL–CIO as the exclusive collective-bargaining representative of the Respondent's employees within the unit just described.

Following that certification, the Respondent executed a continuous series of collective-bargaining agreements over a 35-year period extending from 1955 through August 28, 1990, including a 3-year agreement executed in October 1987 and expiring August 28, 1990. In each of those agreements, the Respondent defined ''the Metal Trades Council of Southern California and its affiliated Local and International Unions, AFL–CIO'' as ''the Union'' and recognized ''the Union'' as the exclusive collective-bargaining representative of its employees within the unit, including the 1987–1990 agreement.

Following the September 5, 1990 rejection by the Union of the Respondent's August 27, 1990 final offer and commencement of a strike, the Respondent hired replacements, and on December 10, 1990, filed a petition with Region 21 seeking certification the Union no longer represented a majority of the unit employees. The petition was docketed and no election has been held. I received in evidence the petition and supporting documents filed by the Respondent as records in Region 31's files but ruled a document attached to the petition purporting to contain the names of employees eligible to vote in any future election and some of those persons' signatures failed to establish the named person were unit employees, failed to establish the signatures were those either of unit employees or the persons who allegedly affixed those signatures, and failed to establish the purported signatures were neither solicited by the Respondent or secured under noncoercive circumstances, i.e., that the attached document had no probative value in the absence of foundational proof. No such proof or other valid evidence concerning the

[1] While every apparent or nonapparent conflict in the evidence has not been specifically resolved below, my findings are based on my examination of the entire record, my observation of the witnesses' demeanor while testifying, and my evaluation of the reliability of their testimony; therefore any testimony in the record which is inconsistent with my findings is hereby discredited.

[2] Local Lodge 102 was also affiliated with District Lodge 94 of the International Association of Machinists, AFL–CIO, an umbrella organization consisting of delegates from Local Lodge 102 and other Local Lodges in the area. The District Lodge employed business agents to represent the members of its affiliated Local Lodges.

Union's representative status following the September 5, 1990 strike was introduced during the hearing.

3. Union authority to negotiate and to accept the Respondent's final contract offer

Until the early 1970s, the unit employees were members of three local unions affiliated with three international unions affiliated in turn with the MTC and the AFL–CIO, namely, MPP, IAM, and the International Brotherhood of Teamsters (IBT), then an affiliate of AFL–CIO. In the early 1970s, those employees who were members of IBT transferred their membership to the IAM; after that date all unit employees were members either of MPP or IAM and represented by stewards and business agents designated by those two organizations for purposes of contract negotiation, agreement and administration. From the 1970s, the chief union spokesman and negotiator for the Union was Rex Paud, an MPP business agent. An IAM business agent, job stewards designated by the IAM and MPP and the executive secretary-treasurer of MTC formed the balance of the Union's negotiating committee in negotiations preceding the 1990 negotiations, including the 1987 negotiations.

In all negotiations preceding the 1990 agreement, when Paud and the Respondent's negotiators[3] followed the practice of carrying over the terms of the previous agreement unchanged except by agreed-upon modifications or additions. Once the modifications and additions were agreed upon, the modifications and additions were explained by Paud to the unit employees at a meeting and a vote conducted to ascertain if a majority approved of or rejected the changes. Following approval and notice to the Respondent, the Respondent prepared a written document setting forth all the terms of the successor agreement, i.e., a document stating the terms carried over from the previous agreement, the terms modifying terms of the previous agreement and any new terms. After review by Paud and the IAM business agent who participated in the negotiations and their assurance the language accorded with the agreements reached in negotiations, the MTC executive secretary-treasurer signed copies of the document on behalf of the Union and forwarded it to Madden and Greener for signature and return of at least one signed copy.

Negotiations for a successor to the 1987–1990 agreement began in July and continued through August 1990. As usual, Paud acted as the Union's chief spokesman and negotiator. The balance of the union committee consisted of an IAM business representative (Max Chavez) and the MPP–IAM job stewards. Paud advised the Respondent's negotiators (J. Alan Madden and Gary Greener) the executive secretary-treasurer of MTC (Richard Bacher) was ill, unable to attend the negotiations,[4] and he was going to conduct the negotiations on behalf of the Union. No objections were raised by the Respondent to Paud's representative capacity until November, when Paud reassured J. Alan Madden he was authorized to represent the Union in negotiating and accepting new contract terms on behalf of the Union and the unit employees.

In mid-August, the Respondent's negotiators presented Paud a contract offer and Paud agreed to take it to the unit employees and secure their views. He did so, the employees voted to reject the offer, and Paud advised the Respondent's representatives the offer was unacceptable. The Respondent's negotiators accused Paud or misrepresenting a portion of the offer; Paud then agreed to take what the Respondent labelled its final contract offer back to the unit employees for their consideration.

On August 27, 1990, the Respondent, Paud, and Chavez received by telefax a document setting out the terms of the Respondent's ''final offer.'' The document read as follows:

WAGES

1. Effective and retroactive to August 29, 1990; 4% across the board.
2. Effective August 29, 1991; 3% across the board.
3. Effective August 29, 1992; 3% across the board.
4. Five Senior Light Machine ''B'' will be promoted Light machine Operator ''A'' provided they meet all qualifications as proposed to the Union.
5. Company will drop Tankman Classification.

MEDICAL

1. Company will pay total cost of medical insurance for employee. All increases during the life of Agreement will be paid by the Company.
2. The Company will contribute $155.00 per month for medical insurance for an employee and one dependent during the life of contract.
3. The Company will contribute $220.00 per month for medical insurance for an employee with two or more dependents during the life of the contract.

OVERTIME

1. If an employee reports to work prior to his normal shift, he will be given the opportunity to work his full shift. Overtime will be paid only after an employee has worked 8 consecutive hours in a single day.

CLASSIFICATION

Shipping and Receiving Clerk starting rate raised to $7.68.

LIGHT MACHINE OPERATOR ''A''

Starting rate raised to $7.67.

The above rates do not reflect the across the board increase.

DURATION

3 year agreement effective August 29, 1990 to August 29, 1993.

At the next negotiating session, J. Alan Madden reiterated the Respondent's position the August 27, 1990 document reflected the Respondent's final contract offer, requested the Respondent by advised by September 7, 1990, as to whether the Union accepted or rejected the offer, and stated the first (4 percent) increase would not be paid retroactive to the day following the expiration of the 1987–1990 agreement (August 29, 1990) if the offer was not accepted by September 7, 1990.

On September 5, 1990, Paud and Chavez sent a telefax to the Respondent's negotiators. That document stated Paud and

[3] J. Alan Madden, a labor consultant, and Gary Greener, senior executive vice president, in the 1987 negotiations.

[4] Bacher died in September 1990.

Chavez were going to tell the employees the Respondent's offer consisted of the following:

(Wages)

1. Effective and retroactive to August 29, 1990; 4% across board, if accepted by September 7, 1990.
2. Effective August 29, 1991; 3% across board.
3. Effective August 29,. 1992; 3% across board.
4. Five (5) senior Light Machine ''B'' will be promoted to Light Machine Operator ''A,'' provided they meet all qualifications as proposed to the Union.
5. Company will drop Tankman classification.

(Medical)

1. Company will pay total cost of medical insurance for employees. All increases during the life of the Agreement will be paid by Company.
2. The Company will contribute $155.00 per month for medical insurance for an employee and one (1) dependent during the life of contract.
3. The Company will contribute $220.00 per month for medical insurance for an employee with two (2) or more dependents during the life of the contract.

(Overtime)

If an employee reports to work prior to his normal shift, he will be given the opportunity to work his full shift. Overtime will be paid only after an employee has worked 8 consecutive hours in a single day, except if excused by management.

(Classification)

Shipping and Receiving Clerk starting rate raised to $7.68. Light Machine Operator ''A'' starting rate raised to $7.67.

(Duration)

Three (3) year Agreement effective August 29, 1990 to August 29, 1993.

On the morning of September 5, 1990, Paud presented and explained to the assembled unit employees the terms of the Respondent's final contract offer and conducted a vote on whether the unit employees wanted to accept or reject that offer. They voted to reject the offer. A vote was then conducted on whether to strike in an effort to secure better terms. The strike vote passed.

Paud advised the Respondent the Union rejected the offer and almost all the unit employees went on strike that day.

The Respondent commenced hiring replacements for the striking unit employees and on September 7, 1990, J. Alan Madden formally advised the Union since the Union and the Respondent had reached an impasse in negotiations and a strike had taken place, the Respondent ''is putting into effect its last proposal to the Union.''[5]

On November 15, 1990, the parties met (again with no representative of MTC present and with Paud acting as the Union's chief spokesman and negotiator and the same Respondent negotiators). Paud stated on behalf of the Union he accepted the Respondent's final contract offer of August 1990 (as amended with respect to retroactivity of the 4-percent increase on September 4, 1990) as the terms of a successor to the expired 1987–1990 agreement. An angry and heated exchange then developed over the strikers' reinstatement, with the Respondent's representatives stating most of the strikers had been replaced and it would not terminate any replacements to afford the strikers' reinstatement; Paud, fearing the exchanges between the stewards and the Respondent's representatives were getting out of control, then ended the meeting with the statement the Union was withdrawing its acceptance of the Respondent's contract offer.

On November 27, 1990, Paud and Chavez addressed a communication to Madden stating, effective that date, the Union accepted the Respondent's contract offer and that the Union would advise the Respondent of the outcome of a vote concerning the offer by the MPP and IAM members scheduled for November 29, 1990. On November 29, 1990, a meeting of those members was conducted by Paud and Chavez and the employees voted to accept the offer.

On November 30, 1990, by facsimile transmission to Madden, Union counsel Herbert M. Ansell advised Madden on November 29, 1990, the Respondent's employees represented by and members of MPP and IAM on November 29, 1990, voted to accept the Respondent's contract offer presented to them on September 5, 1990, and, in a separate paragraph stated:

> unconditional request is made by the employees represented by both the machinists and the metal polishers as and for immediate reinstatement to active employment with the Company.

On receipt of Ansell's communication, Madden replied at the November 15, 1990 meeting the Union conditioned its acceptance of the Respondent's last contract offer on immediate reinstatement of the strikers and ratification of their representatives' acceptance of that offer; that the Respondent considered the first condition a ''counter-offer''; that Ansell's November 30, 1990 communication renewed or continued to condition acceptance of the Respondent's offer on immediate reinstatement of the strikers; and that the Respondent was withdrawing its offer.

On receipt of that communication, Ansell advised Madden his advice to Madden, on behalf of the Union, the Union accepted the Respondent's offer was unconditional, the Respondent's withdrawal of that offer was ineffective because it occurred after the offer had been accepted, and requested acknowledgement a contract between the Union and the Respondent based on the terms of that offer was in full force and effect.

[5] Madden conceded, however, while the Respondent on September 7, 1990, placed in effect the 4-percent increase (proposal 1); the medical proposals (medical 1, 2, and 3); the overtime proposal and the increase in the starting rate of the light machine operator A (part of the classification proposal), it did not promote five senior light machine B operators to light machine A operators (proposal 4), it did not drop the tankman classification (proposal 5) and it did not raise the shipping and receiving clerk starting rate to $7.68 (classification proposal). Nor, of course, has the Respondent abided by the terms of the union-security and dues-checkoff provisions (art. II), the seniority provisions (art. IX), the grievance-arbitration provisions (art. XIV), or the pension fund contribution provisions (art. XXII) of the 1987–1990 agreement.

At all subsequent times the Respondent has adhered to its position no successor to the expired 1987–1990 agreement between the Union and the Respondent has come into existence and the Union has adhered to its position its November 1990 acceptances of the Respondent's contract offer reflected in the September 5, 1990 document set out above created a final and binding agreement between the parties covering the wages, hours, and working conditions of the unit employees.[6]

B. *Analysis and Conclusions*

1. The unit and the Union's representative status

It was undisputed the Union was certified by the Board as the exclusive collective-bargaining representative of a unit of the Respondent's employees in 1955 and for 35 years thereafter the Respondent formally recognized the Union as their representative for collective-bargaining purposes.

While the Respondent contends the Union lost its majority representative status sometime after the strike occurred due to an alleged rejection of such representation by replacements hired during the strike, no valid evidence establishing that alleged loss was adduced.

I therefore find and conclude at all pertinent times the Union has been the duly designated exclusive collective-bargaining representative of a unit consisting of:

> Included: All production and maintenance employees employed at the Employer's Hawthorne, California plant, including all shipping and receiving employees. Excluded: All office clerical employees, watchmen, guards, professional employees, and supervisors as defined in the Labor Management Relations Act, as amended.

2. Union authority to negotiate and accept the Respondent's offer

The successive agreements between the parties were executed on behalf of the Union by the executive secretary-treasurer of the MTC; however, those agreements spelled out the fact they were between the Respondent and ''the Metal Trades Council of Southern California *and* its affiliated Local and International Unions, AFL–CIO'' (emphasis added), those organizations were identified in the agreements as ''the Union,'' a single entity, and ''the Union,'' a single entity, was recognized as the exclusive collective-bargaining representative of the unit employees.

It was undisputed since the 1970s, the agreements were administered by stewards and business agents designed by MPP and IAM, contract negotiations were conducted on behalf of the Union by representatives of the MPP and IAM (with a business representative of the former conducting the negotiations on behalf of the Union and agreeing upon contract terms) and the role the MTC secretary-treasurer played was simply to attend the meetings and sign the final agreement following approval of its language by representatives of the MPP and IAM.

There is no evidence the Respondent questioned the authority of MPP and IAM representatives to speak and act on behalf of the Union in negotiating, accepting, and administering terms of the successive agreements between the parties for approximately 35 years, including the negotiations between the parties following the expiration of the 1987–1990 agreement and the time the Union filed the unfair labor practice charges which led to this proceeding; on the contrary, it was established the MPP business representative, Paud, regularly conducted negotiations on terms for successor agreements on behalf of the Union, advanced, modified, and accepted proposals advanced by the respective parties and advised the Respondent of the Union's agreement to final terms of successive agreements.

The Respondent's representatives accepted Paud's representation. During the 1990 negotiations he was authorized to act on the Union's behalf in those negotiations. Paud exercised that authority without challenge throughout the negotiations. The Respondent's representatives presented their contract offer to Paud and Chavez, and Paud and Chavez on behalf of the Union advised the Respondent of the Union's initial rejection of that offer. The Respondent accepted that rejection as the action of the Union. Paud, Chavez, and Ansell on behalf of the Union prior to its withdrawal accepted the Respondent's offer, and only subsequently did the Respondent attempt to raise questions concerning the authority of the persons just named to speak and act on behalf of the Union.

Throughout the negotiations Paud (and Chavez), as representatives of two of the organizations certified as and recognized by the Respondent as the exclusive collective representative of the unit employees, possessed and exercised actual and apparent authority to bind the Union and the affected employees by accepting the Respondent's contract offer. Similarly Ansell, as the duly designated legal representative of the Union, had actual and apparent authority to bind the Union by his acceptance of the Respondent's contract offer.

On the basis of the foregoing, I find and conclude at all pertinent times Paud, Chavez, and Ansell were duly authorized agents of the Union acting on its behalf in negotiating, agreeing on and accepting terms for, a collective-bargaining agreement covering the wages, hours, and working conditions of the unit employees.

3. Contract formation

Findings have been entered the parties normally formed their final successive agreements by reaching agreement during negotiations on changes in the preexisting agreement, with the understanding the unchanged provisions of the preexisting agreement and the changed or new provisions agreed on would constitute the successor agreement; that in August 1990 the parties bargained to impasse over terms for a successor to the 1987–1990 agreement and the Union; that the Union rejected the initial offer and again rejected an amended offer; that the Union subsequently accepted the Respondent's amended offer; and that the Respondent was notified by the Union of the acceptance of that offer prior to its withdrawal.

The Respondent contends no contract was formed because its offer lacked an effective date and a termination date, because on September 4, 1990, it advised the Union the 4 percent would not be retroactive to August 29, 1990, if the offer

[6] On this ground and due to the pendency of the unfair labor practice charges which led to this proceeding, the Union has refused to participate in further negotiations over terms of a successor to the 1987–1990 agreement.

was not accepted by September 7, 1990, and the Union did not accept its offer by September 7, 1990.

The argument is ingenuous but lacks merit.

To avoid any misconceptions over the terms of its offer, on August 27, 1990, the Respondent reduced its offer to writing and gave it to the Union for transmission to the unit employees.

Under the heading ''Wages,'' the Respondent proposed ''1. Effective and retroactive to August 29, 1990; 4% across the board.''

Under the heading ''Duration,'' the Respondent proposed ''3 year agreement effective August 29, 1990, to August 29, 1993.''

At the September 4, 1990 meeting between the parties, the Respondent advised the Union the 4-percent increase would not be retroactive to August 29, 1990, if the offer was not accepted by the unit employees before September 7, 1990.

The Respondent made no change in its offer with respect to duration; all it did on September 4, 1990, was change its offer with respect to wages to provide for no retroactivity with respect to the 4-percent increase if its offer was not accepted by September 7, 1990.[7]

On the basis of the foregoing, I find and conclude the offer the Union accepted was, inter alia, for a 3-year agreement effective August 29, 1990, through August 29, 1993 and a 4-percent nonretroactive increase over the wage rates of the 1987–1990 agreement effective whenever a unit employee entered or resumed active service after September 7, 1990.

The Respondent also contends no contract was formed because Ansell's November 30, 1990 acceptance of the Respondent's offer was ambiguous, arguing Ansell's request for the strikers' reinstatement conditioned the Union's acceptance of the Respondent's contract offer on reinstatement of the strikers.

This argument lacks merit.

The November 30, 1990 Ansell contract acceptance was separate, clear, unconditional, and unambiguous and the previous (November 27, 1990) acceptance by Paud and Chavez was also unconditional and unambiguous.

The paragraph of the Ansell letter concerning reinstatement of the strikers was a *request*, not a condition.

On the basis of the foregoing, I find and conclude a viable agreement enforceable under the Act was formed by the Union's November 1990 formal acceptances of the Respondent's August 27, 1990 contract offer as amended with respect to the first increase by the Respondent on September 4, 1990.

4. The alleged Union loss of authority to represent employees

I have entered findings the Respondent failed to produce valid evidence the Union lost its status as the exclusive representative of the unit employees for the purpose of bargaining collectively on their behalf with the Respondent concerning their wages, hours and working conditions prior to the time the Union accepted the Respondent's contract offer.

I therefore reject the Respondent's contention the Union was not empowered to act on behalf of the unit employees at the time of the acceptances.

5. The violation

The Board has held in many cases an employer who fails to accept and honor the terms of a collective-bargaining agreement establishing the wages, hours, and working conditions of a unit of its employees reached in bargaining with the duly designated exclusive collective-bargaining representative of its employees fails to comply with the requirements of Section 8(d) of the Act and violates Section 8(a)(1) and (5) of the Act.[8]

The Union's November 27, 1990 unequivocal acceptance of the Respondent's August 1990 contract offer (as modified on September 4, 1990 solely with respect to wage retroactivity of the first 4-percent wage increase) in itself was sufficient to form a complete and binding collective-bargaining agreement covering the wages, hours and working conditions of the unit employees for the duration therein[9] and, in any event, the Union's second (November 30, 1990) unequivocal acceptance accomplished that result, since both acceptances preceded the withdrawal of the Respondent's contract offer. The intervening strike and the hiring of striker replacements failed to lessen the continued viability of the contract offer;[10] thus the Respondent, on receipt of the Union's acceptance of its contract offer, was and is obligated under the Act to accept and honor the agreement reached upon that acceptance.

I therefore find by its failure and refusal to treat the Union's acceptance of its contract offer as forming a valid and enforceable collective-bargaining agreement between the Respondent and the Union and abiding by the terms of that agreement, the Respondent violated Section 8(a)(1) and (5) of the Act.

CONCLUSIONS OF LAW

1. At all pertinent times the Respondent was an employer engaged in commerce in a business affecting commerce within the meaning of Section 2 of the Act.

2. At all pertinent times MTC, MPP, and IAM were labor organizations within the meaning of Section 2 of the Act.

3. At all pertinent times the following constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 of the Act:

> Included: All production and maintenance employees employed at the Employer's Hawthorne, California plant, including all shipping and receiving employees.

[7] The 4-percent increase was placed in effect on September 7, 1990, as to those employees working on that date and on the date of hire or return to work thereafter of new hires and crossovers.

[8] *H.J. Heinz Co. v. NLRB*, 311 U.S. 514 (1941); *Williamhouse-Regency v. NLRB*, 915 F.2d 631 (11th Cir. 1990); *NLRB v. Mid-Valley Steel Fabricators*, 621 F.2d 49 (2d Cir. 1980); *Georgia Kraft Co. v. NLRB*, 696 F.2d 931 (11th Cir. 1983); *Tri-Produce Co.*, 300 NLRB 974 (1990); *Sacramento Union*, 296 NLRB 477 (1989); *Texas Petrochemical Corp.*, 297 NLRB 781 (1989); *Curtin-Matheson Scientific*, 287 NLRB 350 (1987); *Martin J. Barry Co.*, 241 NLRB 1011 (1979); *C & W Lektra Bat Co.*, 209 NLRB 1038 (1974); etc.

[9] See *Sacramento Union*, *Martin J. Barry, Co.*, and *C & W Lektra Bat*, supra.

[10] See *Williamhouse-Regency*, *Curtin-Matheson*, and *Georgia Kraft*, supra.

Excluded: All office clerical employees, watchmen, guards, professional employees, and supervisors as defined in the Act.

4. At all pertinent times Paud, Chavez and Ansell were duly designated agents of the Union authorized to act on the unit employees' behalf.

6. On November 27 and 30, 1990, a collective-bargaining agreement covering the wages, hours, and working conditions of the unit employees and enforceable under the Act was formed by the Union's acceptance of the Respondent's August 1990 contract offer as amended with respect to retroactivity of the first wage increase on September 4, 1990.

7. The Respondent violated Section 8(a)(1) and (5) of the Act by failing and refusing to accept the creation of, and honor the terms of, that agreement.

8. The aforesaid unfair labor practice affected and affects commerce as defined in the Act.

THE REMEDY

Having found the Respondent has engaged in unfair labor practices, I recommend it be directed to cease and desist therefrom and to take affirmative action designed to effectuate the purposes of the Act.

Having found the Respondent violated the Act by failing and refusing to accept the creation of a valid and enforceable collective-bargaining agreement between the Respondent and the Union by the Union's November 1990 acceptances of its contract offer and by failing to abide by the terms of that agreement, I recommend the Respondent be ordered at the Union's request to reduce to writing, execute, forward to the Union for its execution, and abide by the terms of that agreement.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[11]

ORDER

The Respondent, Quality Hardware Manufacturing Co., Hawthorne, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from failing and refusing to recognize a valid and enforceable collective-bargaining agreement with the Union was created upon the Union's acceptance of the Respondent's contract offer and in any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) At the Union's request reduce to writing, execute, and forward to the Union for execution a collective-bargaining agreement containing the terms of the 1987–1990 agreement between the Respondent and the Union as changed, modified or added to by the Respondent's August 1990 contract offer as modified on September 4, 1990, with respect to the retroactivity of the first wage increase specified therein.

(b) Abide by the terms of that agreement.

(c) Post at Hawthorne, California plant copies of the attached notice marked ''Appendix.''[12] Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[11] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[12] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''